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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/756,581	01/08/2001	Craig Mowry	P/2293-12	5628
2352            7590            01/25/2007 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			EXAMINER DURAN, ARTHUR D	
			ART UNIT 3622	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/25/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/756,581	MOWRY, CRAIG	
	<b>Examiner</b>	<b>Art Unit</b>	
	Arthur Duran	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 November 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13, 15-42, 44-60, 62, 64-75, 77-88, 90-111 and 113-116 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13, 15-42, 44-60, 62, 64-75, 77-88, 90-111, 113-116 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

1. Claims 1-13, 15-42, 44-60, 62, 64-75, 77-88, 90-111, and 113-116 have been examined.

#### ***Response to Amendment***

2. The Amendment filed on 11/20/06 is sufficient to overcome the prior rejection. A new reference has been added to the 35 USC 103 rejection.

#### ***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/20/06 has been entered.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8, 11, 13, 15-36, 39-42, 44-49, 51-53, 56-59, 62, 64-67, 70-75, 77-86, 90-97, 100, 101, 104-111, 113-116 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Freeman (2004/0261127) in view of Gerszberg (2003/0142664) in further view of Koenig (7,054,831).

Claims 1-8, 11, 13-36, 39-49, 51-53, 56-59, 61-67, 70-86, 89-97, 100, 101, 104-114:

Freeman (2004/0261127) discloses users being provided full and interactive participation in a live broadcast event where the users can utilize the Internet or websites to affect the live broadcast and also that the content of the live broadcast affects the content on the website (Abstract; Fig. 1; Fig. 6; Fig. 7).

Freeman further discloses that the user can enter responses related to the live broadcast and receive feedback concerning the user response (Paragraph [0005]).

Freeman further discloses that information from the websites can be incorporated into the broadcast:

“Further, information obtained from related Web sites can be integrated into the live program” (Abstract).

Freeman further discloses content related user selectable responses:

“These television systems provide a common video signal accompanied by several synchronized audio channels to provide content related user selectable responses” ([4]).

Freeman further discloses changing content presented based on responses and/or profile: “Selections of the video, audio, graphics display and/or Web pages can be made as a function of immediate viewer entries, or to interrogatory responses presented at the beginning or during the program, or based on a prestored viewer profile. Once a decision is made to switch from one video option to another video option, the digital switch is performed seamlessly” ([14]).

Freeman further discloses adjusting content based on profile ([16]).

Freeman further discloses a variety of programming and dynamically adjusting programming based on different factors:

“[0018] The present invention also has applications for other types of programming. For example, viewers can direct the scenes of a murder mystery. Switching from one scene to another can be done seamlessly without noticeable effect on the viewer. Further, the present invention can be used for any kind of live or pre-recorded event. For instance, a music concert or a political convention can be enhanced in the manner of the invention.

[0019] Accordingly, a primary objective of this invention is providing an enhanced digital live program allowing the display to be tailored to the user's desires, choices or interests.

[0115] The trigger points 500 correspond to the times when the conventional program content can be altered and personalized for the viewers. The programmer can place the trigger points 500 at any time throughout the program. Since the trigger points 500 are unknown to the subscriber, the subscriber does not know when they will receive a personalized message.

[124] Preferably, the URLs, like the various audio and graphics options, have associated time stamps which indicate to the remote digital set top boxes 25 when, during the video program, to display the particular Web pages addressed by the URLs, the selection and display of which is preferably made as a function of viewer responses or viewer profile".

Freeman further discloses e-commerce purchasing related to the content that is presented:

“[0127] In the present invention, the viewer also has the capability to link to a channel website at will. For example, if a viewer is interested in purchasing a product described in an advertisement, by merely clicking on a button on their remote 20, the producer's Website could

be accessed by Internet connection 160 and displayed to the viewer. The viewer could then either obtain more information about the product or order the product, if desired. As described above, this application is possible by sending the URL associated with the producer's Website to the digital cable boxes 25 as part of the interactive program. Upon selection by the viewer, the web browser, located either in the digital set-top box 25 or externally in a connected PC 610, can retrieve the Web pages. The specialized software then synchronizes the Web pages for video display".

Freeman discloses utilizing profile(s)/preferences/demographics to affect presented content including advertising presented ([137], [138], [168]).

Freeman further discloses targeted advertising ([168]).

Freeman further discloses presenting games related to broadcast or as a broadcast and also games and points for games with rewards ([8], ([147],[153])).

Freeman discloses the user/viewer(s) affecting content and content outcomes ([169] and below):

"[Claim] 16. The method of claim 14, wherein the step of gathering viewer specific information comprises the steps of: displaying at least one interrogatory to the viewer, the content of the interrogatory involving program options; collecting entries from the viewer in response to the interrogatories; and wherein the selection of video or audio signals is based in part on the collected viewer entries.

[0121] User selections corresponding to answers to the n successive interrogatory messages are received by the remote interface 270 at the beginning of the show, stored in memory 265 and used throughout the show at the

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appropriate trigger points 500 to subtly change program content as the show progresses”.

Freeman does not explicitly disclose an electronic catalog.

However, Gerszberg discloses interactive television, product catalogs related to the content presented, ([70]) tracking user profile and preference information and presenting content of interest to the user ([14]; [35]; Fig. 17; [57]; [58]; [126]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Gerzberg’s electronic catalog and tailored content to Freeman’s providing product purchasing opportunities related to content and tailored content. One would have been motivated to do this in order to provide better purchasing opportunities for items of interest to the user.

Also, in regards to claim 11, Freeman discloses billing the users ([168]).

In regards to claim 15, Freeman does not explicitly disclose that the user can select broadcast participants. However, Freeman discloses that user input can affect the content broadcast. Therefore, it would be obvious to one skilled in the art that Freeman’s affected broadcast content can include the broadcast options or broadcast participants. One would be motivated to do this in order to present a way of interest for the user to interact with the programming.

Additionally, Freeman discloses that the users are participants in the game or broadcast (see the citations from the rejection above and also the below citations):

“The present invention relates to an interactive digital system enabling viewers full and active participation in experiencing a live broadcast event. (Abstract)

[0018] The present invention also has applications for other types of

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programming. For example, viewers can direct the scenes of a murder mystery. Switching from one scene to another can be done seamlessly without noticeable effect on the viewer. Further, the present invention can be used for any kind of live or pre-recorded event. For instance, a music concert or a political convention can be enhanced in the manner of the invention.

[0169] While the present invention has been described primarily with respect to live events, and in particular sporting events, it has equal potential for enhancing content in other program categories. A viewer can become their own director of a murder mystery or other drama. By entering responses to displayed questions at the initiation of or during the show, the program will branch to alternative video/audio segments as a result of the user selections. In this manner, different viewers with different selections may end up with a different murderer at the conclusion of the broadcast.

[0147] The viewing experience can be further enlightening for the viewer by implementing games and contests during the live sporting event 10. For example, graphics overlays can be developed that query the viewer during the game. During a football broadcast, for example, viewers can be queried with such interrogatories as the following:

[0148] What will be the next play? (RUN/PASS/KICK);

[0149] Will the offense get the first down?;

[0150] Will they score on this possession?;

[0151] Pick the halftime score;

[0152] Who will win?

[0153] Each viewer's responses can be sent back to the control studio 5 for tabulation of scores. Preferably, the responses are packaged at the digital cable box 25 and transmitted to the control studio 5 via the digital backchannel upon the UPLOAD EXTENDED command. Alternatively, tabulation of scores can take place at the digital cable box 25 through the utilization of certain software in memory 265. Each correct answer can correspond to a certain number of points. At the end of the game, the interactive program preferably presents a graphic showing the viewer point total. If desired, advertisers could present special gift certificates for excellent performance in such games. The provision of such certificates would occur by displaying a certain code that a viewer can take to a store to receive the gift. In this manner, viewer interests in sports events can be enhanced."

Particularly note that in citation [169] above that the user can participate in the broadcast and change the outcome of the broadcast.

Additionally, Freeman discloses the users participating in the game as disclosed above.

Freeman does not explicitly disclose that one or more of the web site users uses the website to be features audibly and visibly in the game during the television broadcast.

However, Gerszber discloses utilizing video phone, video conference service, multimedia services associated with a set top terminal or user device or user computer ([10, 13, 55, 60, 61, 69]).

And, Koenig discloses that one or more of the web site users uses the website to be features audibly and visibly in the game during the television broadcast (col 7, lines 36-55; Figures 1, 5).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Koenig's visibly displaying the remote, participating user in the game to Freeman's remote user participating in an online game. One would have been motivated to do this in order to allow the user a better level of participation.

5. Claims 9, 10, 50, 60, 68, 69, 98, 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (2004/0261127) in view of Gerszberg (2003/0142664) in view of Koenig (7,054,831) in view of Spiegel (6,466,918).

In regards to claims 50, 60, 98, 99, Freeman does not explicitly disclose utilizing chat.

In regards to claims 9, 10, 68, 69, Freeman does not explicitly disclose utilizing auctions.

However, Spiegel discloses utilizing interactive television, an e-commerce catalog, chat, and auctions (col 1, lines 15-35; col 2, lines 1-5; col 9, lines 40-51).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Spiegel's advanced features for interacting with a website or interactive television to Freeman's interactive television, user communications, and purchasing. One would have been motivated to do this in order to allow the user more interactivity with the interactive broadcasts.

6. Claims 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (2004/0261127) in view of Gerszberg (2003/0142664) in view of Koenig (7,054,831) in view of Quinlan (2004/0215514).

In regards to claim 12, Freeman does not explicitly disclose selling marketing data. However, Quinlan discloses that selling marketing data is a profitable business ([11]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that Freeman can sell the marketing/profile/preference/demographic data concerning users. One would have been motivated to do this in order to provide a way to increase revenue utilizing information that is available.

7. Claims 37, 38, 87, 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (2004/0261127) in view of Gerszberg (2003/0142664) in view of Koenig (7,054,831) in view of Robbins (5,784,095).

In regards to claims 37, 38, 87, 88, Freeman does not explicitly disclose archiving.

However, Robbins discloses archiving, archiving content presented, and archiving electronic catalogs presented (col 3, lines 40-55).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Robbins archiving to Freeman's presenting a variety of content. One would have been motivated to do this in order to allow the user to access content of interest that has been broadcast priorly.

8. Claims 54, 55, 102, 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (2004/0261127) in view of Gerszberg (2003/0142664) in view of Koenig (7,054,831) in view of Pease (5,855,515).

In regards to claims 54, 55, 102, 103, Freeman does not explicitly disclose hierarchical games.

However, Pease discloses hierarchical games and interactive television (col 1, line 65-col 2, line 20; col 11, lines 5-25)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Pease's advanced gaming features to Freeman's gaming. One would have been motivated to do this in order to present games of more interest to the user.

#### *Response to Arguments*

9. Applicant's arguments with respect to the claims have been considered but are moot in grounds of the rejection above.

On page 19 of the Applicant's Remarks dated 11/20/06, Applicant states that the combination of the prior art does not render obvious that "users are . . . featured audibly and visibly in the game during the television broadcast".

Please see the addition of the Koenig (7,054,831) reference above to the rejection of the independent claims to see how these features are rendered obvious by the combination of the prior art.

Also, Examiner notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

And, Examiner notes that while specific references were made to the prior art, it is actually also the prior art in its entirety and the combination of the prior art in its entirety that is being referred to. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Examiner further notes that it must be presumed that the artisan knows something about the art apart from what the references disclose. *In re Jacobv*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The problem cannot be approached on the basis that artisans would only know what they read in references; such artisans must be presumed to know something about the art

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apart from what the references disclose. *In re Jacoby*. Also, the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint of suggestion a particular reference. *In re Bozek*, 416 F.2d 1385, USPQ 545 (CCPA 1969). And, every reference relies to some extent on knowledge or persons skilled in the art to complement that which is disclosed therein. *In re Bode*, 550 F.2d 656, USPQ 12 (CCPA 1977).

### ***Conclusion***

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

a) Junkin (6,193,610) discloses interactive television and websites and games with online and in person participants interacting in various manners:

"(10) According to the present invention, "at home viewers" can become "at home viewers/players" and will be able to participate as a contestant on the game show or in a contest or game created around an individual sporting event or series of sporting events while it is aired on television. According to one aspect of the invention, "at home viewers/players" can play along with the studio contestants live, in real time, as the show actually airs. These same "at home viewers/players" would also be able to participate in a game or contest created around a specific live sporting event or series of events. These "at home viewer/players" could, depending on the game show and the way in which the game show has been constructed, play along as partners with studio contestants, or they could play in competition with the studio contestants. Alternatively, a separate pool of players from among the "at home viewer/players" group could be created to include or not include the studio contestants. Similarly, these groups could play in competition against one another." (col 1, lines 45-65; col 2, lines 25-35; col 12, line 60-col 13, line 10);

b) Perkowski (6,625,581) discloses WebTV (40, 50), Television (71), match product offerings with profile (38), and electronic product offering catalogs;

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c) Scott (6,338,094) discloses interactive television and websites.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Arthur Duran  
Primary Examiner  
12/6/2006